

### **REMARKS**

This is a full response to the outstanding final Office Action, dated January 7, 2003, which was only received by Applicant by Facsimile transmission sent as a courtesy by the Examiner on July 30, 2003. The Applicant never received the original mailing of the January 7, 2003 final Office Action, and the Application went unintentionally abandoned after Applicant did not respond within the statutory period for responding.

Applicant thanks the Examiner for faxing a courtesy copy of the final Office Action to Applicant's counsel after it was discovered that Applicant never received the original mailing, and so that Applicant may file the concurrently filed Petition To Revive the Application. Applicant submits the above amendments to the claims and these remarks with the concurrently filed Request for Continued Prosecution (RCE), and Reconsideration and allowance of the application and presently pending claims are respectfully requested.

#### **1. Present Status of the Claims**

Upon grant of the Petition To Revive, entry of the RCE, and entry of this Response and the amendments made herein, claims 1-25 remain pending in the Application. The Applicant has amended independent claims 1, 11 and 23 to more clearly define the claimed invention. Additionally, the Applicant herewith submits remarks specifically responding to the rejections raised by the Examiner in the final Office Action. It is believed that no new matter has been added to the Application.

#### **2. Summary of the Rejections**

The final Office Action contains a new rejection of claims 1-8 under 35 U.S.C. §103(a) over U.S. Patent No. 6,269,361 (*Davis*), citing the discussion on pages 3-5 of the

first Office Action, which only contains and discusses the rejection under 35 U.S.C. §102(e) over *Davis* of claims 1-8.

The final Office Action maintains the rejection of pending claims 11-20 under 35 U.S.C. §103(a) over *Davis* alone, and the rejection of claims 9-10 and 21-22 under 35 U.S.C. §103(a) over *Davis* in view of U.S. Patent No. 6,023,685 (*Brett*).

Similarly to the rejection of claims 1-8, the final Office Action contains a new rejection of claim 23 under 35 U.S.C. §103(a) over U.S. Patent No. 6,216,114 (*Alaia*), citing the discussion on pages 3-4 of the first Office Action, which only contains and discusses a rejection under 35 U.S.C. §102(e) of claim 23.

While the final Office Action further rejects claims 24-25 on its face, there is no discussion or statement as to why or under what grounds those claims are rejected in the attached Detailed Action. Nevertheless, Applicant has endeavored to address the rejection of claims 24-25 in the remarks below in the absence of such grounds.

Applicant respectfully traverses these rejections and submits the following remarks in support of allowance of the present application.

**3. Response to Rejections of Claims 1-23 under 35 U.S.C. §103(a).**

The Office Action contains rejections of claims 1-23 under 35 U.S.C. §103(a). For brevity, and because the Applicant's arguments against the rejection of claims 1-23 as being rendered obvious are equally applicable for all of these claims, the Applicant uses claim 1 as illustrative of the response for all of currently pending claims 1-23. Furthermore, the traversal is made with the understanding that independent claims 1, 11 and 23 and all of the dependent claims are also patentably distinct over the prior art and

may include additional features that, beyond those recited in claim 1, provide further, separate, and independent bases for patentability.

The final Office Action first cites to the first Office Action in paragraphs 7-9 in rejecting claims 1-23, and then specifically discusses the rejection of independent claims 1, 11 and 23 in paragraph 10. In response, Applicant refers to the arguments submitted in response to the first Office Action, and incorporates them by reference. Applicant provides the following specific remarks regarding the amendments made herein, and to address the specific comments that do appear in the final Office Action.

While the final Office Action states that *Davis* teaches influence of a position within a search result list using an online competitive bidding process, and *Alaia* teaches a supplier-bidding auction where bid prices start high and move downward, the final Office Action admits that Both *Davis* and *Alaia* fail to teach incrementing and decrementing of bids being performed automatically. In this regard, the final Office Action states that “implementing a process that is done manually on a computer system is old and well known in the art.” However, while using a computer to automate a known process does not by itself impart nonobviousness to the invention, the factors and considerations dictated by law governing 35 U.S.C. §103 apply without modification to computer-related inventions. M.P.E.P. §2106, sec. IV, and applicant submits that the claimed invention claims patentably more than merely implementing prior art manual bidding systems.

To summarize, the claims each contain elements that are neither contemplated nor suggested by the combination of any of the cited prior art references, and each claim provides for the significant advantage of automated and unmonitored bidding for each

bidder over manual bidding systems. Thus, the claims 1, 11 and 23 claim subject matter that is not obvious or well known over the cited prior art.

More specifically, automatic incrementing or decrementing of bids is clearly not taught or suggested in any of the art cited by the examiner. It would not have been "well known" to provide for such automatic incrementing or decrementing in the prior art manual systems discussed in *Davis*, *Alaia* and/or *Brett* as such manual systems require constant monitoring by the bidders to change their position in the auction if they desire a raise or lower their position in the auction.

Also, the non-obviousness of the claimed invention is clear because, among other reasons, there are data and techniques or methods used by the claimed automatic system and method that have never been contemplated in manual systems. For example, the claimed system only initially requires bid management data so that the bidder may provide parameters for the automatic bidding. Such bid management data may include, without limitation, a maximum bid (in the case of the claim 23, a minimum bid) so that the automated bidding for each bidder does not exceed their economic limitations. This allows for the present invention to provide the significant advantage of unmonitored and automated bidding without the need for constant monitoring of the auction by each bidder.

Other bid management data that may be provided includes, without limitation, the size of the increments or decrements desired by the user. Again, using this type of bid management data by a computer controlling bidding in an auction is neither contemplated nor suggested by any of the cited prior art as those systems do not require or use any pre-determined increment or decrement due to their manual nature. On the other hand,

providing such an increment or decrement is another way to further allow unmonitored and automated bidding without the need for constant monitoring of the auction by each bidder. This, for example, allows the bidder to keep from deciding on an increment or decrement each time the bidder would like to improve his position in the auction. The system takes the increment or decrement size, and improves the bidder's position accordingly, while checking to make sure that the maximum or minimum bid has not been achieved by such increment or decrement.

Each of claims 1, 11 and 23 have been amended to more clearly point out that reception of such bid management data facilitates the claimed automated bidding process. Support for these amendments can be found, for example, on p. 4, ll. 17-26 of specification, and in Fig. 1, item 175, Fig. 4, item 177, Fig. 6, item 179 and Fig. 8, item 181.

Further, Applicant notes that the Examiner's citation to *Graham v. John Deere Co.* 383 U.S. 1, 148 USPQ 459 (1966) supports Applicant's argument in response to the first Office Action that secondary considerations indicate the non-obviousness of the claims. As indicated in Attachment "B" of the Applicant's Response to the first Office Action, systems such as those claimed herein which provide for automated bidding have recently come into common usage with much industry fanfare after the filing date of this Application. This imitation by others of Applicant's claimed invention, and commercial success, directly supports the non-obviousness of the claims.

In light of the above, the Applicant believes that the §103(a) rejection of independent claims 1, 11 and 23 has been traversed, and amended claims 1, 11 and 23 are

in condition for allowance. Claims 2-10 and 12-22 depend from claim 1 and 11 respectively, and therefore those claims are in a condition for allowance as well.

**4. Response to Rejections of Claims 24-25.**

Apart from a short statement in paragraph 3 that all of claims 1-25 are rejected as being “unpatentable over the art cited,” the final Office Action contains no grounds or provision under which claims 24-25 are rejected, and fails to provide any discussion or statement in that regard in the Detailed Action. The first Office Action rejected claims 24-25 under 35 U.S.C. §102(e), to which Applicant believes that Applicant’s Response was sufficient to overcome that rejection. The final Office Action does not address Applicant’s arguments provided in the Response to the first Office Action with regard to claims 24-25, and nor does the final Office Action provide reasoning for maintaining the rejection of claims 24-25 despite Applicant’s arguments.

Thus, Applicant formally requests that the Examiner provide the current grounds or reasons for the final Office Action’s rejection of claims 24-25 so that Applicant may properly consider the rejection and respond. In the alternative, Applicant believes that the arguments presented in Applicant’s response to the first Office Action traverses the rejection of the claims therein, and that those claims are allowable over the cited prior art.

Specifically, the references cited by the Office Action fail to disclose a method for automatically managing inventory in a vendor inventory control system, comprising receiving a first inventory value representing the quantity of inventory for a first product, receiving a second inventory value representing the quantity of inventory for a second product; and listing the first and second products on an electronic advertising page

wherein the first product is presented higher on the advertising page than the second product if the first inventory value is higher than the second inventory value. This method is uniquely different from any vendor inventory system before in that the method allows vendors to list or cause to be listed products on an advertising page in an order related to the relative amount of inventory that the vendor currently has. This method has many advantageous effects, including calling attention to viewers of the advertising page first to products that have a high inventory value for the vendor, thus encouraging those viewers to consider the products with the higher inventory values first. None of the references cited in the Office Action describes these steps or describes a system for practicing the steps claimed in claim 24.

In light of the above, the Applicant believes that the rejection of claim 24 has been traversed, and claim 24 is in a condition for allowance. Claim 25 depends from claim 24, and therefore that claim is in a condition for allowance as well.


**CONCLUSION**

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. In view of the foregoing discussions, it is clear that the cited art, in combination, does not teach all of the elements of any claim of the present invention. Thus, the claimed invention is patentably distinct over the prior art. Therefore, reconsideration and allowance of all of claims 1-25 is believed to be in order, and an early Notice of Allowance to this effect is respectfully requested.

If the Examiner should have any questions concerning the foregoing, the Examiner is invited to telephone the undersigned attorney at (310) 712-8311. The undersigned attorney can normally be reached Monday through Friday from about 9:30 AM to 5:30 PM Pacific Time.

Respectfully submitted,

Dated: August 1, 2003



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